

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

RICHARD H. TRULY,

Appellant,

v.

KING COUNTY,

Respondent.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS and LATHERS,
ACCOUSTICAL and DRYWALL SYSTEMS
WORKERS,

Intervenors.

SHB No. 88-3

ORDER GRANTING
SUMMARY JUDGMENT

This matter came before the Board on appellant's Motion for Summary Judgment. Argument was heard before Lawrence J. Faulk (presiding), Richard Gidley and Wick Dufford sitting as the Board on April 28, 1988, in Seattle, Washington. Board Member Judith A. Bendor has reviewed the record.

Prior to hearing the Summary Judgment Motion, the Board heard argument on the Motion to Intervene of the International Brotherhood of Electrical Workers (IBEW) and Lathers, Accoustical and Drywall

1 Systems Workers (LADS). After considering the same, the presiding
2 officer granted the unions status as parties, under the standards for
3 permissive intervention, relying on SAVE v. Bothell, 89 Wn.2d 862
4 (1978).

5 Brent Carson of Buck and Gordon represented appellant Richard H.
6 Truly. Patrick J. Schneider, Deputy Prosecuting Attorney represented
7 respondent King County. Jeffrey Eustis, attorney at law, represented
8 intervenors IBWW and LADS.

9 I

10 The following materials were considered in connection with the
11 Motion for Summary Judgment.

- 12 1. Stipulated Facts, SHB No. 88-3, dated 12 April 1988.
- 13 2. Appellant's Motion for Summary Judgment, dated 12 April 1988.
- 14 3. Memorandum in Support of Appellant's Motion for Summary
15 Judgment, dated 12 April 1988.
- 16 4. Respondent King County's Memorandum in Opposition to
17 Appellant's Motion for Summary Judgment, dated 22 April 1988.
- 18 5. Memorandum of Intervenors in Opposition for Summary Judgment,
19 dated 25 April 1988.

20 II

21 The facts set forth in the statement of Stipulated Facts are
22 annexed hereto as Appendix A and hereby incorporated herein. The
23 stipulation was between appellant and King County. Intervenors did
24

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SUMMARY JUDGMENT
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(2)

1 not indicate any disagreement with these facts. We find the
2 stipulated facts to be undisputed.

3
4 III

5 We conclude that Truly's request for extension of his shoreline
6 substantial development permit was timely.

7 WAC 173-14-060 and the permit itself provide for review by the
8 issuing authority after five years. Following such a review, the
9 permit is to be either extended for a year or terminated. King County
10 added a proviso to the instant permit requiring "that such review
11 shall be requested by the permittee prior to the expiration date."

12 King County argues that December 9, 1987, is the expiration date
13 (the permit having been issued on December 9, 1982), and that any
14 request for extension should have been received by at least December
15 8, 1987, to be "prior to the expiration date." In short, the County
16 says Truly was a day late.

17 Truly argues that the expiration date is really December 10, 1987,
18 because that would be the first day during which the permit was no
19 longer effective. Therefore, he asserts that the filing of the
20 extension request on December 9, 1987, was in accordance with the
21 proviso calling for such requests "prior to the expiration date."

22 As a matter of law, we decide that Truly's interpretation is the
23 correct one. We perceive the plain meaning of the phrase "prior to
24
25

1 the expiration date" to be that a request for extension can be made
2 any time before the permit has expired. Expiration came here, we
3 believe, at the end of the day of December 9, 1987. This approach is
4 consistent with the general statute for computing time, RCW 1.12.040,
5 under which the time within which an act is to be done is computed by
6 "excluding the first day, and including the last" of a given time
7 period.

8 IV

9 In its letter denying the extension King County stated another and
10 different reason for its refusal to extend:

11 Because you submitted the request for extension on
12 the date of permit expiration, [the County] did not
13 have sufficient review time as required by condition
14 4(b).

15 Condition 4(b) is that permit provision referred to above which
16 requires that a request for extension be made "prior to the expiration
17 date."

18 As a matter of law, we conclude that condition 4(b) does not
19 impose any requirement that the permit be submitted sufficiently in
20 advance of the expiration date to provide the County time to review
21 the request before the expiration date.

22 In argument, the County conceded that the request need only be
23 within the five year period and that evaluation of an extension could
24 take place after what would otherwise have been the permit's
25 expiration date. In other words the request serves a notice function

1 and tolls the expiration of the permit at last until the request is
2 properly acted upon.

3
4 V

5 WAC 173-14-060 provides for the extension of a substantial
6 development permit upon a showing of "good cause." This substantive
7 standard was also reiterated in the permit at issue.

8 Intervenor's argue that summary judgment should be entered not for
9 appellant, but in favor of the County, because the record does not
10 disclose that appellant showed "good cause."

11 We decline to rule on this issue with the matter in its present
12 posture. From the record it is apparent that the county never
13 considered the merits of Truly's extension request under the "good
14 cause" standard. We believe that such consideration by the County
15 should precede any review by this Board. Because we agree that a
16 request for extension serves a notice function, we think that an
17 applicant should be able to provide additional information later,
18 during the course of the County's evaluation of "good cause."

19
20 V

21 Intervenor's assert that this Board lacks jurisdiction over this
22 case because an "extension" is not the "granting, denying or
23 rescinding of a permit on shorelines." RCW 90.58.180(1).

24 We disagree. We conclude that an extension request is a part of
25 the granting or denying process as contemplated in the Shoreline
26 Management Act.

27 ORDER GRANTING
SUMMARY JUDGMENT
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2 Based on the foregoing, the Shoreline Hearings Board enters the
3 following

4 ORDER

5 There is no disputed issue of material fact and the moving party
6 (appellant) is entitled to judgment as a matter of law. The action of
7 King County in rejecting Richard H. Truly's request for extension of
8 his shoreline substantial development permit is REVERSED, and the
9 matter is REMANDED to the County for consideration of the request on
10 its merits.

11 DONE this 3d day of May, 1988.

12 SHORELINES HEARINGS BOARD

13 Lawrence J. Faulk 5/2/88
14 LAWRENCE J. FAULK, Presiding

15 Wick Dufford
16 WICK DUFFORD, Chairman

17 Judith A. Bendor
18 JUDITH A. BENDOR, Member

19 Richard Gidley
20 RICHARD GIDLEY, Member

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25 ORDER GRANTING
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lit.

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
DENIED BY CLALLAM COUNTY TO
JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

JAMESTOWN KLALLAM TRIBE and
SEA FARM OF WASHINGTON,

Appellants,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES and
DEPARTMENT OF AGRICULTURE,

v.

CLALLAM COUNTY,

Respondent,

and

SAVE DISCOVERY BAY FOUNDATION
and GUNSTONE FAMILY,

Intervenors and
Cross-Appellants.

SHB NOS. 88-4 AND 88-5

DECISION AMENDMENT UPON
AGREED REMAND

On May 15, 1991, the Board issued its Final Findings, Conclusions
and Order in the above matter.

Following appeal thereof to the Superior Court for Clallam
County, the parties have reached an agreed settlement. Pursuant to
the Court's Order of Remand implementing that agreement and entered

DECISION AMENDMENT UPON
AGREED REMAND
SHB NOS. 88-4 & 88-5

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